

STATE OF INDIANA

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MEMORANDUM

To: Assessing Officials

From: Department of Local Government Finance

Date: December 2007

Subject: Updated Contract for Professional Appraisal Services

As you know, the Department of Local Government Finance ("Department") is charged with the oversight of contracts between assessing officials and vendors for assessment and reassessment services. In an effort to assist your offices, we have prepared this memo outlining some helpful tips for the contracting process, a checklist containing the statutory provisions that must be in every contract, and a model contract for annual adjustments. The checklist and model contract are available on the Department's website at <http://www.in.gov/dlgf/local/assessor.html>.

1. Written Contract Required. Indiana law states that assessing officials may not use the services of a professional appraiser without a written contract developed by the Department or a contract specifically approved by the Department. *See* Ind. Code § 6-1.1-4-18.5. The Department has developed a model contract for annual adjustments, which can be found on our website at <http://www.in.gov/dlgf/local/assessor.html>. The Department is in the process of developing model contracts for other assessing functions as well. If you choose to use a non-Department contract, please send it to the Department for approval before it has been signed.

2. Requirements of Indiana Law. Please review and be aware of the requirements of Indiana Code §§ 6-1.1-4-16, -18.5, and -19.5, and 50 IAC 15-4-1. These laws govern the professional appraiser contracting process and specify certain provisions that must appear in every contract for professional appraiser services. These required provisions include providing a completion date, penalty clause, periodic reporting requirements, statement of types of services, and data collection/data sharing requirements. These topics must be addressed in your contract to obtain Department approval. The checklist provided on the Department's website sets forth each of the required provisions. The checklist can be found at <http://www.in.gov/dlgf/local/assessor.html>.

3. Bidding. Indiana Code § 6-1.1-4-18.5(b) requires that each contract be put out for bid, no matter the dollar amount of the contract. This is also a good business practice. There are a significant number of vendors operating in Indiana, and the competition for assessment contracts should be used to keep costs down and save tax dollars. If you have a variety of options, your

negotiating position will be stronger. Work with your county attorney for assistance with the bidding process.

4. Choosing a Vendor. Before choosing a vendor, consider the available resources of each bidder. If they are relatively low-staffed and have commitments with several other counties, they may be unable to finish your work in a timely manner.

5. Voting. The Department has interpreted the voting requirements listed in Indiana Code § 6-1.1-4-17 to apply only to contracts for general reassessment duties. However, when all assessing officials in a county work together to decide whether to hire a vendor and which vendor to hire, the assessing officials can better coordinate assessing functions and have a stronger negotiating position with the vendor, which will potentially save tax dollars. Therefore, although the Indiana Code does not require assessing officials to vote to choose a vendor in years of annual adjustment, the Department encourages all assessing officials in the county to work together to determine what is best for the county and its taxpayers.

6. Certification of the Vendor. Vendors must be certified as professional appraisers by the Department in each county in which they contract. The purpose of this county-by-county certification is to ensure that the vendor has the resources to devote to *each* county in which it contracts. The vendor does not have to be certified to bid on the contract, but must receive certification from the Department before entering into a contract with the county. If the vendor is already certified as a professional appraiser in your county, no further steps are necessary and you may submit the unsigned contract to the Department for approval. If the vendor is not certified in your county, the vendor must submit a completed *Professional Appraisal Application*, which is available on the Department's website at <http://www.in.gov/dlgf/local/assessor.html>, to the Department's Operations Director, Nancy Stassen. She will notify both the vendor and the county once the vendor is certified. After you receive notice of the certification, you may submit the unsigned contract to the Department for approval. To determine whether a vendor is certified in your county, you may contact Renée C. Lambermont, the staff attorney for the Department, using the contact information below.

7. Submitting Your Contract; Department's Review. If you choose not to use the Department's model contract, you must obtain Department approval before entering into the contract. The Department's review is limited to reviewing the contract to ensure that all provisions required by statute and administrative rule are in the contract. The Department's approval does not mean that the contract is necessarily a good deal for the county or assessing official. You should work with your county attorney to determine if the contract meets your needs and is a good deal for your county.

Also, the Department's approval does not require the county to enter into the contract. For instance, the county could decide that, after receiving Department approval but before signing the contract, it would like to perform the work in-house; the county could disregard the unsigned, Department-approved contract at that time. Further, the Department's approval does not prohibit the county from modifying the contract after receiving Department approval. The only provisions that may not be modified after receiving Department approval are those that are the subject of the Department's review, which are those provisions required by statute and

administrative rule. If you chose to modify the contract after receiving Department approval, please review the Department's checklist, mentioned above, and the requirements of Indiana Code §§ 6-1.1-4-18.5, -19.5, and 50 IAC 15-4-1 to ensure that no required provisions are removed. It is a good idea to work with your county attorney when modifying a Department-approved contract to ensure that required provisions remain intact. You may submit contracts for approval to the Department's staff attorney, Renée C. Lambermont, by fax, postal mail, or email. Her contact information is available below.

8. Data Compliance. Be certain that the vendor you select understands the connection between the contract and the county's responsibility to report compliant data to the Department and Legislative Services Agency. You should make data compliance essential to the performance of the contract and consider including remedies against the vendor if Property Tax Replacement Credit money is withheld from your county due to a failure of performance by the vendor.

9. Address Each Task in the Contract. In drafting the contract, review each specific task that must be performed to achieve the goal (i.e. to annually adjust assessed values or to assess all new construction) and make clear in the contract whether the assessor or the vendor will be responsible for that task. Make sure that the vendor knows exactly what you expect from them. Do not assume that the vendor has the same understanding as you regarding what you need out of the contract; make sure that you put all of your requirements in the written contract.

10. Payments under the Contract. While the specific methods and intervals of payment under the contract are not part of the Department's formal review, we discourage counties from agreeing to pay all or a large portion of the contract fees up front. By providing in the contract that payments shall be made periodically upon invoicing for work completed, or with a large lump-sum payment once all of the contracted work is completed, you will have more leverage if the vendor's work is not fulfilling the requirements of the contract than if you had already paid all or most of the contract price. Work with your county attorney to determine what payment schedule works best for your county.

11. Communicate with Your Vendor. Maintain close contact with your vendor during the work and evaluate the vendor's progress according to the contract's requirements. Unfortunately, we have heard of instances where the assessing official signs the contract and then fails to monitor the vendor's work. While this is a disservice to the taxpayers, it also enhances the likelihood of assessment problems. Assessing officials need to stay involved with their vendors, understand what the vendor is doing, and review the quality of the vendor's work. This can be accomplished by reviewing periodic status reports (which are required by statute), setting goals or intermediate completion dates, and closely monitoring progress. Keep in mind that *you* are ultimately responsible for completion of the work, not the vendor.

12. Ownership of the Data. Do not sign any contract that provides for assessing data generated to belong to, or be exclusively owned by, the vendor. Property tax data is the property of the local and state governments and should never cost government money to obtain. Some vendors try to obtain possession and legal ownership over the data. We consider this to be in violation of several provisions of Indiana law, but if you have agreed to the vendor's contract, you may be bound by its terms.

13. Work with Your County Attorney. As always, we recommend that you work with your county attorney during the contract drafting process. A county attorney is a valuable resource that provides you with a direct attorney-client relationship that the Department cannot. Your county attorney may also be able to help coordinate the contracting functions of other county and township offices to promote data collection and save tax dollars.

14. Submit Signed Contracts. Please remember to send signed copies of all contracts to the Department for tracking. The Department is collecting data to analyze the cost efficiency of assessment vendor contracts in Indiana. We will be distributing this information to the assessing community in hopes that it will provide further information to assist local assessors in decision-making regarding contracts.

15. Performance Bond. A new provision has been added to the Model Contract that requires the Contractor to provide a Performance Bond in the amount of the contract price. This provision is NOT required by statute, but may be helpful to you in the course of business. You should consider including this provision if this is the first time your county has contract with the Contractor, or you have had issues with a contractor's failure to fulfill the terms of the contract. A Performance Bond will be purchased by the Contractor from a Surety licensed to do business in Indiana. For a list of licensed Sureties please contact the Indiana Department of Insurance. The Performance Bond covers the contract price and permits the Assessor, the Surety, or both to find a replacement contractor without having lost any money. As stated above, this provision is not required but can assist you in securing total completion of the contract.

To submit a contract for approval, send a copy either by mail, fax or e-mail to the Department's staff attorneys, Mara McCabe and Cathy Wolter. You may also contact Mara or Cathy regarding any questions about the contract approval process. The contact information is:

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